IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT - LAW DIVISION
TAX AND MISCELLANEOUS REMEDIES SECTION

Naomi Treece, Petitioner/Appellant,	)	
v.	)	No. 87 L 51221
Industrial Commission of Illinois and Lyons Township High School	)	
Respondent/Appellees	)	

DECISION AND JUDGMENT ORDER

This matter is before the Court for a Judicial Review of a Decision of the Illinois Industrial Commission (the Commission) awarding Petitioner temporary total disability (TTD) for a period of 70 weeks, but denying further benefits and additional compensation, all pursuant to sections 19(b), 19(k), 19(l) and 16 of the Worker's Compensation Act (the Act).

ISSUE PRESENTED FOR REVIEW

Whether the finding of the Commission, affirming the finding of the Arbitrator, that Petitioner failed to prove a causal relationship between her accidental injuries of November 17, 1980 and her condition of ill-being, subsequent to November 12, 1982, is contrary to the law and against the manifest weight of the evidence.

FINDINGS, CONCLUSIONS AND DECISION OF THE ARBITRATOR See Attachment A.

FINDINGS, CONCLUSIONS AND DECISION OF THE COMMISSION See Attachment B.

ARGUMENTS OF THE PARTIES AND COMMENTS AND DECISION OF THE COURT

Petitioner contends that the finding of the Commission, adopting the finding of the Arbitrator, that Petitioner failed to prove a causal relationship between her accidental injuries of November 17, 1980 and her condition of ill-being, subsequent to November 12, 1982, is contrary to the law.

Petitioner argues that on February 24, 1981, an Arbitrator implicitly found, in a Section 19(b) decision, that an accident occurred on November 17, 1980 and expressly found that the injuries sustained caused the disabling condition of Petitioner; that on December 30, 1981, the same Arbitrator found, in a Section 19(b) decision, that the disabling condition of Petitioner was the result of an accident sustained on November 17, 1980; that neither of these decisions were reviewed by the Commission and are final determinations; that the issue of causal relation, between Petitioner's condition of ill-being and the accident of November 17, 1980, was determined by an Arbitrator on two different occasions; that the issue of causal relation has been determined in favor of Petitioner by two final decisions of the Commission; that, in respect to the issue of causal relation, the Arbitrator and Commission are bound by the prior determinations under the Doctrine of Res Judicata and the failure of the Arbitrator and Commission to find that a causal relationship exists between Petitioner's condition of ill-being and the accident of November 17, 1980, is contrary to the law.

Respondent argues that the issue presented at each of the Section 19(b) hearing was whether Petitioner's condition of ill-being, on the date of each Section 19(b) hearing, was causally related to the accident of November 17, 1980 (emphasis added); that each time a new period of temporary disability is claimed and evidence is introduced, a different condition of ill-being exists and a new determination of causal relation must be rendered; that at the prior hearings the condition of ill-being established was that of a post-concussion syndrome; that when the issue of permanency was heard at the Arbitration hearings on February 25, 1985 and May 29, 1985, the condition of ill-being established was that of a major depressive disorder; that the underlying issue before the Arbitrator in respect to causal relation was different than the underlying issue before the Arbitrator in the prior hearings and that the Arbitrator, at the subsequent hearing, was not bound by the prior

determination and properly did not apply the Doctrine of Red Judicata.

The Court agrees with Respondent. A review of the record reveals that a different condition of ill-being was before the Arbitrator at the subsequent hearing; that an element of Res Judicata, that the issues be the same, is missing; that the Doctrine of Res Judicata does not apply and that the finding of the Arbitrator, adopted by the Commission, is not contrary to the law.

Petitioner's next contention is that the finding of the Commission, adopting the finding of the Arbitrator, that Petitioner failed to prove a causal relationship between her accidental injuries of November 17, 1980 and her condition of ill-being, subsequent to November 12, 1982, is against the manifest weight of the evidence. Petitioner argues that the finding of the commission, adopting the finding of the Arbitrator, that there is no credible psychological testimony to support a finding that the alleged trauma aggravated or exacerbated her psychological condition is against the manifest weight of the evidence; that Arbitrator Green heard the testimony of Petitioner on two occasions and awarded her TTD benefits; that implicit in the award of TTD benefits is a finding that the testimony of Petitioner was credible; that Arbitrator Galicia reviewed the testimony and reports of Mary Weed, a registered psychologist, from the previous hearings and noted that she stated Petitioner was intentionally doing poorly on the tests and that there was a strong possibility of malingering for secondary gain; that Arbitrator Galicia reviewed the "unwitnessed accident" of November 17, 1980 and noted there was no laceration or bleeding; that Arbitrator Galacia noted that Dr. Young denied that there was any evidence of vomiting, which contradicted Petitioner's complaints of "daily vomiting"; that Arbitrator Galicia noted that Dr. Neely, upon the admission of Petitioner to the University of Chicago Hospital on October 6, 1983, stated that "she sometimes eats like a maniac and occasionally makes herself throw up"; that Arbitrator Galicia noted that Arbitrator Green recalled Petitioner had no problem expressing herself whereas Mary Weed's test results were diametrically opposed to Arbitrator Green's observations; that Dr. Miller found a causal relation based on both organic and functional components and that Dr. Ziporyn

and Dr. Sackett found a causal relationship between Petitioner's depression and the accident.

Respondent argues that Arbitrator Galicia noted that Dr. Marvin Ziporyn, a psychiatrist, clearly lacked credibility in that he had no contact with Petitioner and was not given the number of EEG's in the hypothetical question posed to him, and further assumed there was severe initial damage to the cranial contents, as the basis for his opinion that there was a causal relationship between Petitioner's depression and the accident, when, in fact, there was no evidence in the record of damage to the cranial contents; that Dr. Miller admitted he was not qualified to render a psychological opinion; that Arbitrator Galicia noted that Dr. Glista, a board certified neurologist, stated that the injuries were not related to her present condition of ill-being and that it was to plausible that the accident aggravated Petitioner's depression for a period of four years; that his testimony was found to be highly credible and that Dr. Garron, a clinical psychologist, made no finding in respect to a causal relation between the accident and Petitioner's current emotional condition. Petitioner replies that Dr. Glista, a neurologist, was less qualified to give an opinion in respect to an emotional disturbance than Dr. Ziporyn, a psychiatrist.

The Court determines that even if Arbitrator Galicia erred in reviewing the record compiled before Arbitrator Green and finding that there was a lack of credibility on the part of Petitioner, there was a sufficient evidence in the record to support his findings that 1) no permanent disability was sustained on account of the accident, 2) that Petitioner is entitled to receive TTD benefits to November 11, 1982, 3) that there is no credible psychological testimony to support a finding that the trauma aggravated or exacerbated Petitioner's psychological condition and 4) the implicit finding that Petitioner failed to prove that a causal relationship exists between her accidental injuries of November 17, 1980 and her condition of ill-being, subsequent to November 12, 1982. He noted that Petitioner had four normal EEG's. He reviewed the medical opinions and determined that the opinion of Dr. Glista was highly credible and determined that the opinion of Dr. Ziporyn lacked credibility. The Commission reviewed the entire record, adopted the findings of the Arbitrator, made additional findings and affirmed the decision of the Arbitrator. Credibility is to be

determined by the trier of fact. In the instant case Arbitrator Green determined the credibility of the witness at the two Section 19(b) hearings. Arbitrator Galicia determined the credibility of the witnesses both at the two 19(b) hearings. Although it was improper for him to again determine the issue of credibility that was previously before Arbitrator Green there is sufficient evidence in the record to support his finding of no causal relation even if the erroneously relied upon evidence is excluded. The Commission reviewed the entire record including the findings of the Arbitrator in respect to credibility. Their findings and decision are not against the manifest weight of the record.

The decision of the Commission is confirmed.

Dated: Sept. 9, 1988 Judge Alexander P. White